

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHARMACYCLICS LLC and)	
JANSSEN BIOTECH, INC.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 18-192 (CFC)
)	CONSOLIDATED
FRESENIUS KABI USA, LLC, et al.,)	
)	
Defendants.)	

~~PROPOSED~~ CLAIM CONSTRUCTION ORDER

The parties having briefed their positions on the construction of claim terms in United States Patent Nos. 7,514,444 (the “’444 patent”), 8,008,309 (the “’309 patent”), 8,476,284 (the “’284 patent”), 8,497,277 (the “’277 patent”), 8,697,711 (the “’711 patent”), 8,735,403 (the “’403 patent”), 8,754,091 (the “’091 patent”), 8,952,015 (the “’015 patent”), 8,957,079 (the “’079 patent”), 9,181,257 (the “’257 patent”), 8,754,090 (the “’090 patent”), 8,999,999 (the “’999 patent”), 9,125,889 (the “’889 patent”), 9,801,881 (the “’881 patent”), 9,801,883 (the “’883 patent”), 9,296,753 (the “’753 patent”), 9,725,455 (the “’455 patent”), 10,106,548 (the “’548 patent”), and 10,125,140 (the “’140 patent”) (collectively, the “Asserted Patents”), and the Court having conducted a *Markman* hearing on the disputed terms in C.A. No. 18-192 (CFC) on May 20, 2019 (D.I. 169) (the “*Markman* Hearing”), IT IS HEREBY ORDERED that the claim terms below, as used in the

Asserted Patents, are construed as follows for the reasons set forth in the transcript of the *Markman* Hearing:

I. Claim Terms At Issue In C.A. No. 18-192 (CFC)

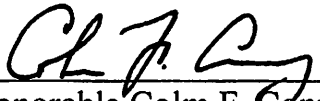
TERM (PATENT(S))	CONSTRUCTION
“compound” ’444 Patent ’309 Patent ’284 Patent ’711 Patent ’091 Patent ’079 Patent ’257 Patent ’883 Patent	“A substance formed when two or more elements are chemically bonded together. These elements cannot be separated by physical means.”
“A crystalline form of [ibrutinib]” ’548 Patent ’140 Patent	No construction necessary—plain and ordinary meaning
“X-ray powder diffraction (XRPD) pattern as shown in FIG. 1” ’753 Patent	No construction necessary—plain and ordinary meaning
“irreversible covalent Btk inhibitor” ’277 Patent	“inhibitor of Btk that can form a covalent bond with an amino acid residue of Btk”
“irreversible inhibitor of a Bruton’s tyrosine kinase (Btk)” ’403 Patent	“inhibitor of Btk that can form a covalent bond with an amino acid residue of Btk”

TERM (PATENT(S))	CONSTRUCTION
“irreversible Btk inhibitor” '091 Patent	“inhibitor of Btk that can form a covalent bond with an amino acid residue of Btk”
“irreversible inhibitor of Bruton’s tyrosine kinase (Btk)” '999 Patent	“inhibitor of Btk that can form a covalent bond with an amino acid residue of Btk”
“inhibitor of a tyrosine kinase” '015 Patent	“inhibitor of the enzymatic phosphotransferase activity of a tyrosine kinase”
“inhibitor of Bruton’s tyrosine kinase (Btk)” '090 Patent '889 Patent '881 Patent	“inhibitor of the enzymatic phosphotransferase activity of Bruton’s tyrosine kinase (Btk)”
“an X-ray powder diffraction (XRPD) pattern comprising 2-Theta peaks at $5.7\pm0.1^\circ$, $18.9\pm0.1^\circ$, and $21.3\pm0.1^\circ$” '455 Patent	“an X-ray powder diffraction (XRPD) pattern that includes peaks at $5.7\pm0.1^\circ$, $18.9\pm0.1^\circ$, and $21.3\pm0.1^\circ$ 2-Theta, generated by crystalline Form A”
“wherein the X-ray powder diffraction (XRPD) pattern further comprises a 2-Theta peak at [$16.1\pm0.1^\circ$; $13.6\pm0.1^\circ$; or $21.6\pm0.1^\circ$]” '455 Patent	“wherein the X-ray powder diffraction (XRPD) pattern further includes a peak at [$16.1\pm0.1^\circ$ 2-Theta; $13.6\pm0.1^\circ$ 2-Theta; or $21.6\pm0.1^\circ$ 2-Theta], generated by crystalline Form A”

TERM (PATENT(S))	CONSTRUCTION
<p>“wherein the X-ray powder diffraction (XRPD) pattern further comprises 2-Theta peaks at $[13.6\pm0.1^\circ, 16.1\pm0.1^\circ, \text{ and } 21.6\pm0.1^\circ; 13.6\pm0.1^\circ \text{ and } 16.1\pm0.1^\circ; 13.6\pm0.1^\circ \text{ and } 21.6\pm0.1^\circ; \text{ or } 16.1\pm0.1^\circ \text{ and } 21.6\pm0.1^\circ]$”</p> <p>’455 Patent</p>	<p>“wherein the X-ray powder diffraction (XRPD) pattern further includes peaks at $[13.6\pm0.1^\circ \text{ 2-Theta}, 16.1\pm0.1^\circ \text{ 2-Theta}, \text{ and } 21.6\pm0.1^\circ \text{ 2-Theta}; 13.6\pm0.1^\circ \text{ 2-Theta and } 16.1\pm0.1^\circ \text{ 2-Theta}; 13.6\pm0.1^\circ \text{ 2-Theta and } 21.6\pm0.1^\circ \text{ 2-Theta}; \text{ or } 16.1\pm0.1^\circ \text{ 2-Theta and } 21.6\pm0.1^\circ \text{ 2-Theta}]$, generated by crystalline Form A”</p>
<p>“an X-ray powder diffraction (XRPD) pattern with characteristic peaks at $5.7\pm0.1^\circ \text{ 2-Theta}, 13.6\pm0.1^\circ \text{ 2-Theta}, 16.1\pm0.1^\circ \text{ 2-Theta}, 18.9\pm0.1^\circ \text{ 2-Theta}, 21.3\pm0.1^\circ \text{ 2-Theta}, \text{ and } 21.6\pm0.1^\circ \text{ 2-Theta}$”</p> <p>’753 Patent</p>	<p>“an X-ray powder diffraction (XRPD) pattern that includes peaks at $5.7\pm0.1^\circ \text{ 2-Theta}, 13.6\pm0.1^\circ \text{ 2-Theta}, 16.1\pm0.1^\circ \text{ 2-Theta}, 18.9\pm0.1^\circ \text{ 2-Theta}, 21.3\pm0.1^\circ \text{ 2-Theta}, \text{ and } 21.6\pm0.1^\circ \text{ 2-Theta}$, generated by crystalline Form A”</p>
<p>“X-ray powder diffraction (XRPD) pattern comprising [further comprises] [a] 2-Theta peak[s] at about [value]”</p> <p>’548 Patent ’140 Patent</p>	<p>“X-ray powder diffraction (XRPD) pattern comprising [further comprises] [a] 2-Theta peak[s] at $[value] \pm 0.1^\circ \text{ 2-Theta}$, generated by the crystalline form”</p>

TERM (PATENT(S))	CONSTRUCTION
<p>“The same X-ray powder diffraction (XRPD) pattern post storage at [40°C and 75% RH // 25°C and 97% RH] for at least a week”</p> <p>'753 Patent</p>	<p>No construction necessary—plain and ordinary meaning</p>

SO ORDERED this 3^d day of February, 2020.


 The Honorable Colm F. Connolly
 United States District Judge